

No. 1-11-1740

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 MC 1237042
)	
LATECHA WORDLAW,)	Honorable
)	Clarence Burch,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

- ¶ 1 **Held:** Defendant was not proven guilty beyond a reasonable doubt of obstructing a peace officer because the detective was not engaged in an authorized act when he requested entrance into defendant's apartment without a warrant or exigent circumstances, and defendant's statements or physical acts did not obstruct the detective in the performance of his unauthorized duties. Reversed and remanded for reconsideration of defendant's sentence for battery where her sentence was influenced by the unsupported guilty verdict for resisting or obstructing a peace officer.
- ¶ 2 Following a jury trial, the jury found defendant guilty of battery and resisting or obstructing a peace officer (hereinafter, "obstructing"). The trial court sentenced defendant to one year of conditional discharge. Defendant appeals her conviction for obstructing a peace

officer, contending she was not proven guilty beyond a reasonable doubt and that her conviction should be reversed due to a fatal variance between the charge complained of and the evidence presented against defendant.

¶ 3 The misdemeanor complaint charged in relevant part that defendant committed the offense of obstructing a peace officer in that she "knowingly resisted and obstructed Detective Garcia #20555 while in the discharge of his duties by concealing a person of interest in a homicide investigation inside her basement apartment."

¶ 4 Detective Roberto Garcia testified that on July 4, 2010 at approximately 2:10 p.m. he was investigating the attempted murder of Stevie Wordlaw, defendant's brother, and the murder of Dan Gaston. When he arrived at the back door of defendant's apartment, Garcia knocked and a male voice said, "Who is it?" After Garcia announced that he was the police, he heard movement behind the door. A short time later, defendant opened the door. As Garcia was about to enter the apartment, defendant slammed the door on Garcia's leg. Garcia told defendant that he and his partner, Detective Gregory Jones, were at her apartment to locate and interview Latony Wilson. Defendant was "uncooperative." Garcia then called for a supervisor and defendant called 911.

¶ 5 When the supervising sergeant arrived at defendant's back door, he spoke with the detectives, then with defendant. Defendant eventually allowed the officers into her apartment. She told the officers that her boyfriend, Latony Wilson, was not in the apartment, and showed them the same. The officers left the residence after determining that Wilson was not there and Garcia returned to his vehicle. He circled around the block and when he returned, Garcia observed Wilson without a shirt and shoes, and wearing only shorts, "scurrying" towards the back door of defendant's apartment and looking around. Garcia identified Wilson based on prior identifications and photographs related to Garcia's investigation.

¶ 6 Garcia exited his vehicle and told Wilson to stop, but Wilson ran into defendant's apartment. Wilson closed the door on Garcia and his partner. After the detectives knocked on the back door with no answer, they called for a supervisor and Garcia went to the front door in case Wilson fled out of the front door. While Garcia was at the front door, defendant opened the door and tried to walk out of the door with her sister and a young child. She appeared surprised to see him at her front door. Garcia told her she was under arrest for obstruction of justice. When Garcia went to make the physical arrest, defendant struck him with her hands and elbows, and used her hips and arms to position them to resist arrest. Additional officers arrived and assisted Garcia in placing her under arrest. While trying to place defendant under arrest, she shouted to her sister to call the police and threw her cell phone to her sister. Garcia was not able to freely place defendant in handcuffs because she was being combative. Wilson was ultimately arrested the same day as defendant.

¶ 7 On cross-examination, Garcia admitted that he did not have a warrant and that he did not see anyone with a gun running into defendant's apartment. When the officers entered defendant's apartment to look around, Garcia did not see any men, only defendant and another woman. He did not sustain any injuries from defendant. After other assisting officers arrived, they were immediately able to subdue defendant and place her in handcuffs.

¶ 8 Officers William Molina and Edward Leighton testified to observing defendant struggling with Garcia as he attempted to arrest her. All three testifying officers denied observing defendant extend her arms and invite her arrest.

¶ 9 Defendant's sister, Sherina Wordlaw, testified on defendant's behalf. Sherina testified that she arrived at defendant's home at about 2 p.m. on July 4, 2010, after defendant called her and asked her to take defendant to the police station in order to make a report. Sherina and defendant were leaving the apartment through the front door because defendant intended to go to

the police station to report that Garcia had been harassing defendant. They were walking out of the front door with two small children when they encountered Garcia. When Garcia stated that he was going to arrest defendant, defendant handed her phone and keys to Sherina, and Sherina placed the items inside her purse. Garcia took Sherina's purse, emptied its contents, retrieved defendant's keys, and entered defendant's apartment. Defendant never threw her cell phone; rather, she handed it to Sherina. According to Sherina, it only took seconds for Garcia to arrest defendant. Defendant was cooperative during the arrest; she did not struggle with Garcia. Sherina did not see defendant strike Garcia or flail her arms.

¶ 10 Defendant testified that she lived alone on July 4, 2010, and that she woke up in the afternoon because she had a hangover from the night before. Her friend Tamisha Robinson slept over at her apartment that night. Someone beating on her back door caused defendant to wake up. She "threw" her voice off, and asked "Who is it?," in case the person at the back door was not someone defendant was not interested in speaking with. When she learned that the police were at the back door, defendant said, "Hold on," so that she could get dressed. She recognized Garcia because he was investigating a crime against defendant's brother. Garcia informed defendant that he was looking for her boyfriend, Latony Wilson, and she replied that Wilson did not live there and that they were no longer in a relationship. Defendant asked Garcia whether he had a warrant and Garcia replied that he did not. Garcia began staring at defendant and they began arguing because defendant said that Garcia should not have been watching her in that way. If Garcia did not have a warrant, then he could not come in. She tried to push the door closed and as she was pushing it, Garcia was pushing the door back open into defendant. Garcia left her apartment after defendant called 911 and asked for a supervisor. She called because Garcia would not leave her doorway. Garcia remained outside in her doorway until the supervisor arrived, at which time the supervisor asked defendant to step outside. Garcia eventually left.

¶ 11 Defendant called her sister, Sherina, immediately prior to calling 911. Sherina arrived in approximately 10 minutes. Defendant and Sherina intended to file a report against Garcia because Garcia refused to leave defendant's home. As defendant, Sherina, and the two children, were leaving through the front door of defendant's apartment, defendant again encountered Garcia. Garcia said the only way they were leaving the building was in handcuffs unless they took Garcia back into defendant's apartment. Rather than letting him in, defendant told Garcia to arrest her. She handed her phone and keys to Sherina and placed her hands behind her back. Garcia handcuffed her. Defendant testified that at no point did she hit, elbow, or push her weight against Garcia.

¶ 12 Defendant rested and the parties presented closing argument. The State argued that Garcia went to defendant's apartment "merely to ask questions trying to find some evidence that will help solve a criminal case." Instead of being able to accomplish this purpose, defendant "chose to resist [Garcia] and chose to batter him in that vestibule area. The detective didn't go there looking to pick a fight. He went there to do his job, and she denied him that opportunity. She struck a police officer." The jury found defendant guilty of battery and resisting a peace officer. Following denial of defendant's post-trial motions in which defendant challenged the jury's guilty verdict for resisting or obstructing a peace officer, the court sentenced defendant to one year of conditional discharge. It did not specify whether the sentence applied to the battery charge or the obstructing charge.

¶ 13 Defendant first contends that the State failed to prove her guilty of obstructing a peace officer. The State contends that this court should not review this argument as it is moot because, according to defendant's Certified Statement of Conviction, defendant was solely convicted of battery. The Certified Statement is not a part of the record but was attached as an exhibit to the State's reply brief and the State argues we may take judicial notice of the document. It shows

that defendant was charged with two offenses: battery and resisting or obstructing a peace officer. Battery is listed first. The Certified Statement has two entries listing a "verdict of guilty," both entered on March 14, 2011, and identified as "C001" and "C002." Then, the Certified Statement shows that defendant was sentenced to one year of conditional discharge for "C001." We may reasonably presume that "C001" corresponds with the battery charge.

Therefore, the State is correct in asserting that, according to the Certified Statement, defendant was only sentenced on the battery charge. However, the Certified Statement does not control. A court will "presume that the common-law record is correct," but, "[w]hen a conflict exists between the common-law record and the report of proceedings, a court must give the report of proceedings precedence." *People v. Lane*, 2011 IL App (3d) 080858, ¶ 24. We find the trial court's oral pronouncement does not provide clarity as to whether defendant was convicted of obstructing a peace officer. However, although the record is unclear, we need not definitively answer this question because even if we accept the State's contention, the record reflects that the trial court relied on the obstructing verdict in determining that defendant was not eligible for supervision.

¶ 14 The record shows that the jury signed two guilty verdict forms, one for "resisting a peace officer," and another for "battery." The oral pronouncement, however, appears to impose a single sentence. The trial court did not expressly merge the convictions or indicate that it was not imposing a sentence on the obstructing verdict. Further, the State argued that defendant was not eligible for supervision because she was found guilty of resisting a peace officer. While considering the parties' argument on whether the court could sentence defendant to supervision, the court asked defense counsel how could it "give [defendant] anything other than probation?" After defense counsel responded that the trial court would have to grant the defense's motions reversing the obstructing verdict, the court sentenced defendant to one year of conditional

discharge. In light of the trial court's apparent reliance on the obstructing charge in determining defendant's sentence, we find it necessary to determine whether the evidence supports the jury's verdict.

¶ 15 "When a defendant challenges the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Ross*, 229 Ill. 2d 255, 272 (2008). The reviewing court must construe all reasonable inferences in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The reviewing court does not retry the defendant. *Ross*, 229 Ill. 2d at 272. Rather, the trier of fact determines witness credibility, weighs testimony, and draws reasonable inferences from the evidence. *Id.* "A conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of defendant's guilt. *Id.*; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 16 To sustain a guilty verdict for obstructing a peace officer, the State was required to prove that (1) defendant knowingly obstructed a peace officer; (2) the officer was performing an authorized act in his official capacity; and (3) defendant knew he was a peace officer. 720 ILCS 5/31-1(a) (West 2010). The parties do not dispute that defendant knew Garcia was a peace officer, *i.e.*, a detective for the Chicago Police Department. Rather, defendant takes issue with the first and second elements of proof. Specifically, defendant argues there was no obstruction where there was no physical act of obstruction and that Detective Garcia was not performing an authorized act because he did not have a warrant to search defendant's home for Wilson. We will first address whether Garcia was performing an authorized act.

¶ 17 "Under the Fourth Amendment, absent exigent circumstances or consent, a home may not be searched without a warrant." *People v. Greene*, 289 Ill. App. 3d 796, 801 (1997); citing

People v. Swiercz, 104 Ill. App. 3d 733, 737 (1982). It is undisputed that Garcia did not have a warrant to search defendant's home for Latony Wilson when defendant refused him entry into her home to do so. "The State bears the burden of demonstrating that exigent circumstances authorized the warrantless entry" into defendant's home in search of Wilson. *People v. Gott*, 346 Ill. App. 3d 236, 242 (2004). The Illinois Supreme Court has recognized several factors as relevant in determining whether exigency existed:

"(1) whether the crime under investigation was recently committed, (2) whether there was any deliberate or unjustified delay by the police during which time a warrant could have been obtained, (3) whether a grave offense was involved, particularly a crime of violence, (4) whether there was reasonable belief that the suspect was armed, (5) whether the police officers were acting on a clear showing of probable cause, (6) whether there was a likelihood that the suspect would escape if he was not swiftly apprehended, (7) whether there was strong reason to believe the suspect was in the premises, and (8) whether the police entry was made peaceably, albeit nonconsensually." *Id.*

¶ 18 Importantly, the State has not argued that any of the factors for showing exigent circumstances were present and justified Garcia's entry into defendant's home. Wilson was not being sought as a suspect in the detectives' homicide investigation and there was no probable cause showing that Wilson perpetrated the crime against the two victims. Wilson was merely a person of interest that Garcia sought to speak with due to Garcia's belief that Wilson was a witness to the crime. There was no testimony that the officer believed Wilson to be armed. Because Garcia had no warrant, did not receive defendant's consent to search her home, and

because there is no evidence that exigent circumstances existed permitting Garcia's warrantless entry, we find that Garcia was not performing an authorized act in seeking warrantless entry into defendant's apartment to search for and interview Wilson. See *e.g.*, *People v. Swiercz*, 104 Ill. App. 3d 733, 737 (1982) (officer's warrantless entry into defendant's apartment to speak with defendant's neighbor regarding neighbor's suspected domestic battery of wife was not an "authorized" act). Therefore, the State failed to prove defendant guilty of obstructing a peace officer.

¶ 19 Moreover, even if we were to somehow construe Garcia's actions as authorized, we would find that defendant did not "obstruct" him when she refused to open her door. Defendant relies on *People v. Hilgenberg*, 223 Ill. App. 3d 286, 289 (1991), to argue that the State had to show that defendant engaged in some physical act or exertion in order to constitute obstruction. She argues that because she merely declined to open her door to allow the police to enter to search for Latony Wilson, she did not engage in a physical act. She analogizes to *People v. Cope*, 299 Ill. App. 3d 184, 190-91 (1998), to support her claim that merely refusing to open her door to Garcia did not constitute obstructing a police officer. Our supreme court has recently addressed whether a physical act is required to prove obstruction in *People v. Baskerville*, 2012 IL 111056, ¶ 29, and concluded that it is not required. Rather, the court held that "obstructing a peace officer *** does not necessitate proof of a physical act, and that providing false information may constitute obstruction under section 31-1(a) when the misinformation interposes an obstacle that impedes or hinders the officer and is relevant to the performance of his authorized duties."

¶ 20 The State suggests that it was a delay tactic for defendant to refuse the officers' entry into her apartment and to request a supervisor before allowing the officers into her apartment to search for Wilson, and that this delay impeded or hindered the officers in the performance of

their authorized duties because the delay allowed Wilson to leave defendant's apartment without the officers' knowledge. Even if this were true, defendant's reason for refusing the officers entrance into her apartment is of no consequence because she was within her fourth amendment right to decline their entry, as explained above. See *e.g.*, *United States v. Prescott*, 581 F.2d 1343 (1978) (concluding that even if concealing evidence of wrongdoing, an individual may not be penalized for passively withholding consent to a warrantless search of one's home). For the same reason, defendant was not required to open her back door to Garcia at the time that Garcia stated he observed Wilson enter defendant's apartment. We hold that defendant's action in exercising her fourth amendment right cannot constitute obstructing a peace officer even if those actions or perhaps the constitution itself interposed an obstacle in the officers' investigation. Accordingly, we find that the State failed to prove her guilty of obstructing a peace officer.

¶ 21 Defendant also contends that she was prejudiced because the State changed its theory of the case from contending that the obstruction was refusing to open the door to allow Garcia into her apartment to search for Wilson, to arguing striking the detective was obstruction and resisting, creating a "fatal variance" from the charging instrument. However, we need not reach this issue having determined that the State failed to prove her guilty beyond a reasonable doubt. For the same reason, we also need not reach defendant's contention of a violation of the one-act, one-crime rule.

¶ 22 Based on the foregoing, we reverse the obstructing guilty verdict of the circuit court of Cook County and remand to the trial court for re-sentencing on the battery conviction because we find that the trial court may have relied on the obstructing guilty verdict in sentencing defendant to one year of conditional discharge rather than supervision.

¶ 23 Reversed and remanded.